

FILED IN THE U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NOV 13 2024

SEAN F. MC AVOY, CLERK
SPOKANE, WASHINGTON

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Case No: 2:24-CR-00156-MKD

Plaintiff,

Pretrial Diversion Agreement

EILEEN MARIE LOMBARDI,

Defendant.

Plaintiff, United States of America, by and through Vanessa R. Waldref, United States Attorney for the Eastern District of Washington, and Dan Fruchter and Jeremy Kelley Assistant United States Attorneys, as well as Defendant, Eileen Marie Lombardi (“Defendant”), and Defendant’s counsel, Steve Roberts, agree to the following Pretrial Diversion Agreement (the “Agreement”):

I. Overview and Information

1. On January 24, 2024, the United States Attorney's Office for the Eastern District of Washington notified Defendant that the Drug Enforcement Agency was investigating Defendant for, *inter alia*, Acquiring or Obtaining a Controlled Substance by Misrepresentation, Fraud, Forgery, Deception, or Subterfuge, in violation of 21 U.S.C. § 843(a)(3).

1 2. Defendant waives indictment and consents to the filing of a one-count
 2 Information (the Information) in the United States District Court for the Eastern District
 3 of Washington, charging Defendant with one count of Acquiring or Obtaining a
 4 Controlled Substance by Misrepresentation, Fraud, Forgery, Deception, or Subterfuge,
 5 in connection with the Covered Conduct, as set forth below.

6 3. Defendant stipulates and agrees that Defendant did in fact violate 21
 7 U.S.C. § 843(a)(3) and that the United States could prove Defendant's guilt beyond a
 8 reasonable doubt. Defendant wishes to accept responsibility for this conduct.
 9 Accordingly, Defendant stipulates and agrees to the following facts, referred to herein
 10 as the "Covered Conduct":

11 Beginning in November 2021, Defendant was employed by Mid-Valley Hospital
 12 and Clinic ("Mid-Valley") as a Registered Nurse. Defendant's employment authorized
 13 her to have access to all Controlled Substances in Mid-Valley's inpatient and outpatient
 14 services and the Emergency Department. Defendant had previously diverted Controlled
 15 Substances at a former employer hospital in 2012. Lombardi had, in 2018, while
 16 working for that previous employer hospital, successfully completed the Washington
 17 Health Professional Services program offered through the Washington Board of
 18 Nursing, which offers nurses with a substance use disorder "an opportunity to safely
 19 provide patient care through the monitoring of nurses in a manner that safeguards the
 20 public throughout the stages of their recovery and program participation." See
 21 "Washington Health Professional Services (WHPS)," available at:
 22 <https://nursing.wa.gov/support-practicing-nurses/support-substance-use>.

23 Shortly after she began working at Mid-Valley, Defendant began to obtain and
 24 acquire Dilaudid, which is a brand name for hydromorphone HCl ("Dilaudid").
 25 Dilaudid is a Schedule II controlled substance. Initially, Defendant diverted Dilaudid
 26 through a process known as "wastage;" that is, pursuant to routine orders for a patient,
 27 Defendant dispensed Dilaudid contained in a 1 mg or 2 mg vial from automated
 28 medication dispensing systems for a *bona fide* patient. Then, Defendant withdrew the

1 prescribed dose of the Dilaudid contained in the dispensed vial, *e.g.*, 0.5 mg, into a
2 syringe and set that syringe aside for the patient, took another syringe from her pocket,
3 withdrew the remaining Dilaudid from the vial (which, under Mid-Valley policy, was
4 supposed to be disposed of, or “wasted,” by emptying the vial into the sink) and put that
5 syringe in her pocket. Defendant then took the diverted Dilaudid home at the end of
6 her shift.

7 Later in her employment, Defendant began to enter overrides into the automated
8 medication dispensing system to obtain access to additional Dilaudid, which she then
9 diverted to her own personal use. In entering the overrides, Defendant used the names
10 of real patients, many of whom had already been discharged from the hospital. While
11 a nurse might typically note in the patient record the reason for an override—*e.g.*,
12 “patient complains of increased pain”— Defendant entered no notes in the patient
13 record to explain her overrides. Mid-Valley typically had a cumulative total of fewer
14 than one override per week from all nurses; however, the number of overrides entered
15 when Defendant was working was consistently significantly higher than those entered
16 by other staff. Defendant also often volunteered to work extra shifts, which Defendant
17 admitted later was so she could have more access to obtain and acquire Dilaudid.
18 Defendant admitted to Drug Enforcement Agency (DEA) investigators that she diverted
19 2-3 units of 1 mg/ml Dilaudid every shift she worked at Mid-Valley. Defendant
20 admitted that she diverted about half the drugs she stole through the use of overrides
21 and half through wastage thefts of amounts designated as waste after administration of
22 Dilaudid to *bona fide* patients.

23 Mid-Valley’s own investigation showed that between November 2021 and
24 October 2023 Defendant obtained and acquired Dilaudid through fraudulent and
25 deceptive overrides totaling 898 mg of Dilaudid. Additionally, Mid-Valley’s
26 investigation showed that Defendant obtained and acquired 469 mg of Dilaudid through
27 fraudulent and deceptive medication wastage. In total, Mid-Valley’s investigation
28 determined between November 2021 and October 2023 Defendant obtained and

1 acquired, through misrepresentation, fraud, forgery, deception, and subterfuge,
 2 approximately 1,367 mg of Dilaudid.

3 Defendant voluntarily surrendered her DEA Certificate of Registration No.
 4 ML6465151 on or about November 6, 2024. On or about July 15, 2024, Defendant
 5 agreed to an Order with the Washington State Board of Nursing in Master Case Nos.
 6 M2024-335 and M2024-336. In the Order, Defendant agreed to participate in the
 7 Washington Health Professional Services (WHPS) monitoring program for a period of
 8 between one (1) and five (5) years. The length of the program will be at the sole
 9 discretion of the program. Defendant is further Ordered not to have direct access to
 10 dispense, administer, count or waste controlled substances or any other medications or
 11 to have unsupervised prescribing authority until approved under the WHPS program.

12 4. On authority from the Attorney General of the United States, through
 13 Vanessa R. Waldref, United States Attorney for the Eastern District of Washington,
 14 prosecution in the Eastern District of Washington for the Covered Conduct shall be
 15 deferred for 60 months. This 60-month period begins on the date this Agreement is
 16 signed by both parties and accepted by the Court. If Defendant fulfills her obligation
 17 to successfully complete the WHPS monitoring program as described in Paragraph 8,
 18 *infra*, prior to the end of the 60-month period, the Agreement may be accelerated to
 19 terminate as early as November 6, 2025.

20 5. The United States and Defendant stipulate and agree that the Court will
 21 maintain jurisdiction over this matter and that the Court shall be the final arbiter as to:
 22 (1) whether a party breached this Agreement, and if so; (2) the appropriate remedy,
 23 which may include either terminating the Agreement or modifying its terms.

24 **II. Terms**

25 Defendant stipulates and agrees to the following terms:

26 6. **Waiver of Constitutional Rights.** Defendant, by entering this
 27 Agreement, agrees to waive certain constitutional rights including (1) the right to a jury
 28 trial; (2) the right to see, hear, and question witnesses; (3) the right to compel witnesses

1 to testify; (4) the right to remain silent at trial; and (5) the right to testify at trial.
2 Defendant knowingly and voluntarily waives the above rights.

3 7. **Supervision.** Defendant stipulates and agrees to be supervised by the U.S.
4 Probation Office during this 60-month period. Further, Defendant understands the
5 following:

- 6 a. Defendant shall not violate any federal, state, or local law. This term
7 does not apply to minor civil infractions such as speeding.
- 8 b. If Defendant is arrested or has any official contact with law
9 enforcement in a civil or criminal investigative capacity, Defendant
10 shall notify Defendant's supervising pretrial diversion officer within
11 two business days.
- 12 c. Defendant shall live within the jurisdiction of the Eastern District of
13 Washington. If Defendant seeks to reside outside the District,
14 Defendant shall notify and seek the approval of Defendant's
15 supervising pretrial diversion officer so that appropriate arrangements
16 in light of the Agreement can be made.
- 17 d. Defendant shall maintain employment in a lawful occupation. When
18 out of work, Defendant shall notify Defendant's supervising pretrial
19 diversion officer. In the event that Defendant becomes self-employed,
20 Defendant shall provide evidence of such self-employment.
- 21 e. Defendant shall report to Defendant's supervising pretrial diversion
22 officer as directed by the Court or U.S. Probation. Any failure to abide
23 by the reporting requirements as established by the Court or U.S.
24 Probation shall be deemed a violation of the Agreement.
- 25 f. Defendant shall not possess, control, consume, and/or use any illegal
26 controlled substance, including marijuana, nor own, possess, or have
27 access to any firearm, ammunition, destructive device, or dangerous
28 weapon (*i.e.*, anything that was designed, or was modified for, the

1 specific purpose of causing bodily injury or death to another person,
2 such as nunchakus or tasers), unless it has been disclosed to, and
3 approved by, U.S. Probation.

4 g. Defendant must undergo a substance abuse evaluation and, if indicated
5 by a licensed/certified treatment provider, enter into and successfully
6 complete an approved substance abuse treatment program, which could
7 include inpatient treatment and aftercare upon further order of the court.
8 Defendant must contribute to the cost of treatment according to her
9 ability to pay. Defendant must allow full reciprocal disclosure between
10 the supervising officer and treatment provider.

11 h. Defendant shall submit to drug testing as ordered by U.S. Probation.

12 i. Defendant will allow the probation officer to visit at any time at
13 Defendant's home or elsewhere and will permit the probation officer to
14 take any items prohibited by the conditions of supervision that he or she
15 observes in plain view.

16 j. Defendant shall abide by any other conditions imposed by Defendant's
17 supervising pretrial diversion officer.

18 8. **State of Washington Board of Nursing Agreed Order.** Defendant
19 agrees to fully comply with the requirements of the Agreed Order entered against her
20 in the State of Washington Board Agreed Order in Master Case Nos. M2024-335 and
21 M2024-336, filed on or about ~~July~~ 15, 2024. Specifically, Defendant agrees to comply
22 with the following requirements, as set out in the Agreed Order:

23 a. Defendant shall comply with the WHPS monitoring program.
24 Participation will be at Defendant's expense, until the WHPS
25 monitoring program determines that participation in the program is no
26 longer necessary. The length of participation in the WHPS monitoring
27 program will be at the sole discretion of the program. Initial monitoring
28 contracts may have a duration of one (1) to five (5) years and will

1 require biological fluid or tissue screenings as deemed necessary by the
2 WHPS monitoring program. Defendant may be required to appear
3 before the Substance Use Disorder Review Panel. Defendant shall sign
4 a release that authorizes the WHPS monitoring program to provide the
5 monitoring records and reports about Defendant's participation in the
6 WHPS monitoring program to the Board of Nursing or its designee.

7 b. Defendant shall not have direct access to dispense, administer, count or
8 waste controlled substances or any other medications such as
9 benzodiazepines, until re-evaluated as address in the WHPS monitoring
10 contract.

11 c. Defendant shall notify WHPS of current employment, any plans to
12 change Defendant's work status, duties, or place of employment for
13 prior approval as addressed in the WHPS monitoring contract.

14 d. Defendant shall not have unsupervised prescriptive authority until re-
15 evaluated as addressed in the WHPS monitoring contract.

16 Defendant stipulates and agrees that any failure to comply with the WHPS program,
17 terminating the program without permissions, or being expelled from the program shall
18 constitute a violation of the Agreed Order and this Diversion Agreement.

19 9. **DEA Registration.** Defendant stipulates and agrees that she will not seek
20 reinstatement of her surrendered DEA Certificate of Registration No. ML6465151, or
21 seek to apply for any other DEA Certificate of Registration, for a period of two years
22 from the date she surrendered her Certificate of Registration, November 6, 2023.
23 Defendant stipulates, agrees, and understands that after November 6, 2025, she may
24 seek reinstatement of her surrendered DEA Certificate of Registration, but that
25 reinstatement shall be entirely at the discretion of the DEA.

26 10. **Tolling.** Defendant stipulates and agrees to toll the running of all
27 applicable statutes of limitations and any time-based defenses for the Covered Conduct.
28 This tolling shall run from the date the Agreement is signed by all parties until the

1 Agreement expires or is terminated by the Court. Defendant stipulates and agrees that
2 the Agreement's tolling provision does not abridge or curtail the applicable statute of
3 limitations in any way, but rather extends the applicable statute of limitations by the
4 period of time that the Agreement is in effect.

5 Defendant further expressly waives indictment and all rights to a speedy
6 indictment and/or trial pursuant to the Sixth Amendment of the United States
7 Constitution, 18 U.S.C. § 3161, Federal Rule of Criminal Procedure 48(b), and any
8 applicable Local Rules of the United States District Court for the Eastern District of
9 Washington for the period during which this Agreement is in effect.

10 11. **Breach.** If the Court, after a hearing, terminates the Agreement based on
11 a breach by Defendant, the United States may resume its prosecution against Defendant
12 as to the charge(s) under investigation, and any additional charges.

13 12. **Admissibility of the Agreement in Prosecution.** In the event that the
14 Court terminates the Agreement based on a breach by Defendant, Defendant stipulates
15 and agrees that the Agreement and Defendant's admissions contained therein shall be
16 admissible against Defendant at any trial, sentencing, or other related proceeding.

17 The United States stipulates and agrees to the following:

18 13. **Deferred Prosecution and Dismissal.** The United States stipulates and
19 agrees to defer prosecution of the above-captioned matter for a period of 60 months.
20 When and if Defendant satisfies all the requirements of the Agreement (including any
21 modifications), the United States stipulates that it will seek dismissal with prejudice of
22 the Information filed against Defendant pursuant to this Agreement. Except in the event
23 of a violation by Defendant of any term of this Agreement, the United States will bring
24 no additional charges against Defendant relating to Defendant's conduct as described
25 in the Information and the Covered Conduct set forth above. This agreement does not
26 provide any protection against prosecution for any crimes except as set forth above.
27 Defendant and the United States understand that the Court must approve deferral under
28 the Speedy Trial Act, in accordance with 18 U.S.C. § 3161(h)(2). Should the Court

1 decline to defer prosecution for any reason: (1) both the United States and Defendant
2 are released from any obligation imposed upon them by this Agreement; and (2) this
3 Agreement shall be null and void, except for the tolling provisions set forth herein.

4 **III. Approvals and Signatures**

5 Agreed and submitted on behalf of the United States Attorney's Office for the
6 Eastern District of Washington.

7
8 Vanessa R. Waldref
9 United States Attorney

10 
11 Jeremy J. Kelley
12 Assistant U.S. Attorney

11/8/2024
Date

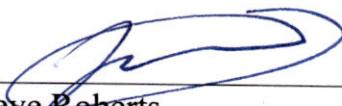
13 
14 Dan Fruchter
15 Assistant U.S. Attorney

11/8/2024
Date

1 I have read the Agreement and have carefully reviewed and discussed every
2 part of the agreement with my attorney. I understand and voluntarily enter into this.
3 Furthermore, I have consulted with my attorney about my rights, I understand those
4 rights, and I am satisfied with the representation of my attorney in this case. I
5 understand the terms and conditions of the Agreement and agree to comply with them.
6

7 E. Lombardi

8 Eileen Marie Lombardi
9 Defendant

10 
11 Steve Roberts

12 Attorney for Defendant

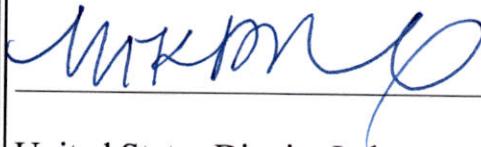
13 11/8/24

14 Date

15 11/8/2024

16 Date

17 Approved without passing judgment on the merits or wisdom of this diversion.

18 
19 United States District Judge

20 11/13/2024

21 Date

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